

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090180
Plaintiff-Appellee,	:	TRIAL NO. B-0807842
vs.	:	
CAMERON FLOWERS,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant,	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Cameron Flowers was found guilty following a jury trial of the aggravated robbery, robbery, and felonious assault of Katelyn Staley and the aggravated robbery and robbery of Morgan Purcell. The jury acquitted him of the accompanying gun specifications and a second count of felonious assault relating to Staley. At sentencing, the trial court merged the aggravated-robbery and robbery counts relating to Staley and imposed the maximum sentence of eight years in prison. The trial court imposed a six-year prison term for the felonious assault of Staley. The trial court also merged the aggravated-robbery and robbery counts relating to Purcell and imposed the maximum sentence of eight years in prison. The trial court ordered all the terms to be served consecutively for an aggregate prison

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

term of 22 years. Flowers now appeals, raising four assignments of error for our review.

In his first assignment of error, Flowers argues that the trial court erred in denying his motion for a continuance so that he could retain an expert to examine Staley's medical records. He further contends that the trial court erred by not excluding the medical records from evidence when the state had waited until the day of trial to provide them as discovery. We disagree.

The record reveals that Flowers insisted that his case proceed to a jury trial on January 27, 2009. Because the trial court was busy trying another matter, it transferred Flowers's case to a visiting judge. On January 29, 2009, Flowers was back before the trial court. Inclement weather had hampered the availability of jurors, so the visiting judge had been unable to try his case.

Defense counsel asked the trial court to grant him a continuance because he had just received Staley's medical records on January 27, 2009 and he wanted to retain an expert to examine the records because the records indicated that Staley's tooth had been cracked, while the bill of particulars had stated that several teeth had been knocked out. Defense counsel told the court that he believed Staley's injuries were inconsistent with being hit by a gun.

The trial court then asked defense counsel if he still planned to proceed with an alibi defense. When defense counsel replied affirmatively, the trial court responded, "Your defense is he didn't do it, he wasn't there; but if he did, it's not serious physical harm. Is that correct?" Defense counsel replied, "No, that's not correct." The court then asked, "What is it?" Defense counsel answered, "The defense is—yes, it is that he was not there, but I don't believe it happened the way the state's witnesses are claiming." The trial court then said, "Okay. That's more cross-examination. It's up to the jury or the finder of fact to determine the credibility of

the witnesses. I am going to deny your motion to appoint an expert and—I don’t have one in front of me—your oral motion, as well as any motion for a continuance.”

Based upon our review of the record, we cannot conclude that the trial court abused its discretion in denying Flowers’s motion for a continuance. Because Flowers informed the court that he was only pursuing an alibi defense, we fail to see how the state’s late disclosure of the medical records prejudiced his defense. And contrary to Flowers’s arguments on appeal, the state did not violate the rule set forth in *Brady v. Maryland*.² In *Brady*, the United States Supreme Court held that the Due Process Clause requires the government to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment.³ Staley’s medical records, while material to the felonious-assault charges, were not favorable to Flowers. Moreover, Flowers’s argument that the trial court should have prohibited the state from using the medical records at trial is meritless. Had Flowers wished to limit the state’s use of these records, he could have filed a motion in limine or objected to their use during the trial; instead he did neither. Having found merit in none of his arguments, we overrule his first assignment of error.

In his second assignment or error, Flowers contends that his sentence was contrary to law because the trial court erred in failing to merge the aggravated robbery and felonious assault of Staley. He argues that because they were part of a single transaction that was committed with the same animus, they were allied offenses of similar import. But Flowers’s argument ignores the first prong of the two-tiered test for allied offenses set forth in *State v. Cabrales*.⁴ A comparison of the elements of the two offenses demonstrates that the commission of one offense does

² (1963), 373 U.S. 83, 87, 83 S.Ct. 1194.

³ *Id.*

⁴ 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181.

not necessarily result in the commission of the other offense.⁵ As a result, the trial court properly declined to merge, for purposes of sentencing, the aggravated-robbery and felonious-assault counts related to Staley.

Flowers also argues that the trial court's imposition of a 22-year prison term was excessive given his young age and his lack of a violent criminal history. But each of Flowers's sentences was within the applicable statutory range,⁶ and they were not so disproportionate to his offenses that they shock the sense of justice in the community.⁷ The trial court had evidence before it that Flowers had approached two young women, demanded at gunpoint their money and cellular phone, and then pistol-whipped them in the mouth after they had complied with his demands. In view of these facts, as well as Flowers's extensive criminal history, we cannot say that the trial court's sentence was excessive. As a result, we overrule his second assignment of error.

In his third assignment of error, Flowers contends that the trial court denied him a fair trial and violated his Sixth Amendment right to confront witnesses when it permitted a police detective to testify, over objection, about "information from a confidential informant indicating Flowers was the only suspect involved in the aggravated robberies."⁸

⁵ *State v. Preston* (1986), 23 Ohio St.3d 64, 65, 491 N.E.2d 685 (holding that aggravated robbery and felonious assault are not allied offenses of similar import because the commission of aggravated robbery does not necessarily result in the commission of felonious assault); see, also, *State v. Smith* (June 19, 1998), 1st Dist. Nos. C-970618 and C-970619; *State v. Canyon*, 1st Dist. Nos. C-070729, C-070730, and C-070731, 2009-Ohio-1263, at ¶33-34; *State v. James*, 12th Dist. No. CA2008-04-037, 2009-Ohio-1453, at ¶17-18; *State v. Hamilton*, 8th Dist. No. 91896, 2009-Ohio-3595, at ¶32; *State v. Smith*, 2nd Dist. No. 08CA0060, 2009-Ohio-5048, at ¶19-20.

⁶ *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus.

⁷ *State v. Weitbrecht*, 86 Ohio St.3d 368, 1999-Ohio-113, 715 N.E.2d 167.

⁸ See *Crawford v. Washington* (2004), 541 U.S. 36, 52, 59, 124 S.Ct. 1354 (holding that witness statements taken by a police officer "in the course of investigations" are testimonial if they are admitted for their truth); see, also, *State v. Lewis*, 1st Dist. Nos. C-050989 and C-060010, 2007-Ohio-1485, at ¶31.

But Flowers's claim is belied by the record. On direct examination, the detective testified that during his investigation he had received a phone call from an informant. Just as he was about to testify as to what the informant had said, defense counsel objected on the basis of hearsay. The trial court responded, "He hasn't said what anyone said yet. He said someone called and left a report. I will overrule as to that." The assistant prosecuting attorney then said, "Okay. I'll ask it—ask a different question in a different way. During the course of your investigation, were you able to develop any suspect in the robbery case?" The detective replied, "Yes, ma'am." The assistant prosecuting attorney then asked, "And who was the suspect that you developed based on your investigation?" The detective replied, "Cameron Flowers." Defense counsel then objected, stating, "Judge, I move to strike. That's hearsay and it is totally improper." The trial court overruled the objection.

Thus, contrary to Flowers's assertions, the detective's testimony was not "testimonial hearsay" in violation of his Sixth Amendment right to confrontation. The detective did not testify as to what the informant had told him.⁹ Rather, the detective stated only that he had spoken to a confidential informant during his investigation and that Flowers had become a suspect during his investigation.¹⁰ Because the detective's statement was neither testimonial nor hearsay, the trial court did not violate Flower's constitutional right to confrontation under the Sixth Amendment in overruling his hearsay objection. We, therefore, overrule his third assignment of error.

⁹ *Crawford*, supra, at 59, fn.9 (noting that to avoid the Confrontation Clause, absent other circumstances, it is sufficient that the statement be nonhearsay); *Lewis*, supra, at ¶41 (noting that "Ohio and federal courts have permitted the introduction of testimonial statements not subjected to prior confrontation where the testimony merely provided background information or a context for the investigation").

¹⁰ See *State v. Rodriguez*, 9th Dist No. 09CA009269, 2010-Ohio-400, at ¶12 (holding that statements made by an investigating officer that are offered only to establish the steps taken in solving a crime are not hearsay statements); see, also, *State v. Wilson*, 8th Dist. No. 92148, 2010-Ohio-144, at ¶21-26; *State v. Blanton*, 10th Dist. No. 08AP-844, 2009-Ohio-5334, at ¶38.

In his fourth assignment of error, Flowers argues that his convictions were based upon insufficient evidence and were against the manifest weight of the evidence. When a defendant claims that a conviction is supported by insufficient evidence, this court must review the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found all the elements of the crime proved beyond a reasonable doubt.¹¹ When reviewing a defendant's claim that a conviction is against the manifest weight of the evidence, this court must weigh the evidence and the credibility of the witnesses to determine if the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.¹²

Flowers argues that the weight and sufficiency of the evidence did not support his identity as the perpetrator of the crimes because (1) Purcell and Staley's identifications were weak and fraught with numerous inconsistencies; (2) there was no physical evidence linking him to the crimes; and (3) and his alibi defense was substantial. We disagree. None of these arguments, either alone or taken together, persuade us that his convictions were unsupported by sufficient evidence or against the manifest weight of such evidence.

Purcell identified Flowers from a photographic lineup seven days after the robbery. She testified that she was positive that Flowers was the man who had approached her and Staley as they left a nightclub because he had distinctive "spots or freckles" on his face. Purcell testified that Flowers had approached them with a gun, demanded their money and her cellular phone, and then had hit them both in the mouth with his gun, after they had complied with his demands. She testified that Staley had fallen to the ground, bleeding. Her upper lip had been cut, and part of her front

¹¹ *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132.

¹² *Tibbs v. Florida* (1982), 457 U.S. 31, 102 S.Ct. 2211.

tooth had been chipped off. Thus, Purcell's trial testimony was alone sufficient to support the jury's finding that Flowers was the perpetrator of the offenses.

Furthermore, this is not the exceptional case where the evidence weighs heavily against the convictions. Purcell's pretrial and in-court identifications were not weak. While Staley was unable to identify Flowers during the lineup, she testified at trial that she was positive Flowers had been the perpetrator based upon his distinctive eyes and his freckles. At the same time, the jury could have reasonably discounted Flowers's alibi defense. While Flowers, his mother, and his girlfriend testified that Flowers had been at his parents' home at the time of the robbery and felonious assault, the jury could have reject their testimony based upon their close relationship with Flowers and their desire to obtain his acquittal. In sum, our review of the record in this case does not reveal that the jury clearly lost its way. We, therefore, overrule Flowers's fourth assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 3, 2010

per order of the Court _____.
Presiding Judge